

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Health Care Surrogate Act is amended by changing Sections 10, 20, and 65 as follows:

(755 ILCS 40/10) (from Ch. 110 1/2, par. 851-10)

Sec. 10. Definitions.

"Adult" means a person who is (i) 18 years of age or older or (ii) an emancipated minor under the Emancipation of Minors Act.

"Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line, where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies, and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.

"Available" means that a person is not "unavailable". A person is unavailable if (i) the person's existence is not known, (ii) the person has not been able to be contacted by telephone or mail, or (iii) the person lacks decisional capacity, refuses to accept the office of surrogate, or is unwilling to respond in a manner that indicates a choice among

the treatment matters at issue.

"Attending physician" means the physician selected by or assigned to the patient who has primary responsibility for treatment and care of the patient and who is a licensed physician in Illinois. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under this Act.

"Close friend" means any person 18 years of age or older who has exhibited special care and concern for the patient and who presents an affidavit to the attending physician stating that he or she (i) is a close friend of the patient, (ii) is willing and able to become involved in the patient's health care, and (iii) has maintained such regular contact with the patient as to be familiar with the patient's activities, health, and religious and moral beliefs. The affidavit must also state facts and circumstances that demonstrate that familiarity.

"Death" means when, according to accepted medical standards, there is (i) an irreversible cessation of circulatory and respiratory functions or (ii) an irreversible cessation of all functions of the entire brain, including the brain stem.

"Decisional capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment or forgoing life-sustaining treatment and the ability to reach and communicate an informed decision in

the matter as determined by the attending physician.

"Forgo life-sustaining treatment" means to withhold, withdraw, or terminate all or any portion of life-sustaining treatment with knowledge that the patient's death is likely to result.

"Guardian" means a court appointed guardian of the person who serves as a representative of a minor or as a representative of a person under legal disability.

"Health care facility" means a type of health care provider commonly known by a wide variety of titles, including but not limited to, hospitals, medical centers, nursing homes, rehabilitation centers, long term or tertiary care facilities, and other facilities established to administer health care and provide overnight stays in their ordinary course of business or practice.

"Health care provider" means a person that is licensed, certified, or otherwise authorized or permitted by the law of this State to administer health care in the ordinary course of business or practice of a profession, including, but not limited to, physicians, nurses, health care facilities, and any employee, officer, director, agent, or person under contract with such a person.

"Imminent" (as in "death is imminent") means a determination made by the attending physician according to accepted medical standards that death will occur in a relatively short period of time, even if life-sustaining

treatment is initiated or continued.

"Life-sustaining treatment" means any medical treatment, procedure, or intervention that, in the judgment of the attending physician, when applied to a patient with a qualifying condition, would not be effective to remove the qualifying condition or would serve only to prolong the dying process. Those procedures can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions, and the administration of drugs, antibiotics, and artificial nutrition and hydration.

"Minor" means an individual who is not an adult as defined in this Act.

"Parent" means a person who is the natural or adoptive mother or father of the child and whose parental rights have not been terminated by a court of law.

"Patient" means an adult or minor individual, unless otherwise specified, under the care or treatment of a licensed physician or other health care provider.

"Person" means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency, or any other legal entity.

"Qualifying condition" means the existence of one or more of the following conditions in a patient certified in writing in the patient's medical record by the attending physician and by at least one other qualified health care practitioner ~~physician~~:

(1) "Terminal condition" means an illness or injury for which there is no reasonable prospect of cure or recovery, death is imminent, and the application of life-sustaining treatment would only prolong the dying process.

(2) "Permanent unconsciousness" means a condition that, to a high degree of medical certainty, (i) will last permanently, without improvement, (ii) in which thought, sensation, purposeful action, social interaction, and awareness of self and environment are absent, and (iii) for which initiating or continuing life-sustaining treatment, in light of the patient's medical condition, provides only minimal medical benefit.

(3) "Incurable or irreversible condition" means an illness or injury (i) for which there is no reasonable prospect of cure or recovery, (ii) that ultimately will cause the patient's death even if life-sustaining treatment is initiated or continued, (iii) that imposes severe pain or otherwise imposes an inhumane burden on the patient, and (iv) for which initiating or continuing life-sustaining treatment, in light of the patient's medical condition, provides only minimal medical benefit.

The determination that a patient has a qualifying condition creates no presumption regarding the application or non-application of life-sustaining treatment. It is only after a determination by the attending physician that the patient

has a qualifying condition that the surrogate decision maker may consider whether or not to forgo life-sustaining treatment. In making this decision, the surrogate shall weigh the burdens on the patient of initiating or continuing life-sustaining treatment against the benefits of that treatment.

"Qualified health care practitioner" means an individual who has personally examined the patient and who is an Illinois licensed physician, advanced practice registered nurse, physician assistant, or resident with at least one year of graduate or specialty training in this State who holds an Illinois temporary license to practice medicine and is enrolled in a residency program accredited by the Liaison Committee on Graduate Medical Education or the Bureau of Professional Education of the American Osteopathic Association.

"Physician" means a physician licensed to practice medicine in all its branches in this State.

~~"Qualified physician" means a physician licensed to practice medicine in all of its branches in Illinois who has personally examined the patient.~~

"Surrogate decision maker" means an adult individual or individuals who (i) have decisional capacity, (ii) are available upon reasonable inquiry, (iii) are willing to make medical treatment decisions on behalf of a patient who lacks decisional capacity, and (iv) are identified by the attending

physician in accordance with the provisions of this Act as the person or persons who are to make those decisions in accordance with the provisions of this Act.

(Source: P.A. 95-331, eff. 8-21-07.)

(755 ILCS 40/20) (from Ch. 110 1/2, par. 851-20)

Sec. 20. Private decision making process.

(a) Decisions whether to forgo life-sustaining or any other form of medical treatment involving an adult patient with decisional capacity may be made by that adult patient.

(b) Decisions whether to forgo life-sustaining treatment on behalf of a patient without decisional capacity are lawful, without resort to the courts or legal process, if the patient has a qualifying condition and if the decisions are made in accordance with one of the following paragraphs in this subsection and otherwise meet the requirements of this Act:

(1) Decisions whether to forgo life-sustaining treatment on behalf of a minor or an adult patient who lacks decisional capacity may be made by a surrogate decision maker or makers in consultation with the attending physician, in the order or priority provided in Section 25. A surrogate decision maker shall make decisions for the adult patient conforming as closely as possible to what the patient would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the patient's personal,

philosophical, religious and moral beliefs and ethical values relative to the purpose of life, sickness, medical procedures, suffering, and death. Where possible, the surrogate shall determine how the patient would have weighed the burdens and benefits of initiating or continuing life-sustaining treatment against the burdens and benefits of that treatment. In the event an unrevoked advance directive, such as a living will, a declaration for mental health treatment, or a power of attorney for health care, is no longer valid due to a technical deficiency or is not applicable to the patient's condition, that document may be used as evidence of a patient's wishes. The absence of a living will, declaration for mental health treatment, or power of attorney for health care shall not give rise to any presumption as to the patient's preferences regarding the initiation or continuation of life-sustaining procedures. If the adult patient's wishes are unknown and remain unknown after reasonable efforts to discern them or if the patient is a minor, the decision shall be made on the basis of the patient's best interests as determined by the surrogate decision maker. In determining the patient's best interests, the surrogate shall weigh the burdens on and benefits to the patient of initiating or continuing life-sustaining treatment against the burdens and benefits of that treatment and shall take into account any other

information, including the views of family and friends, that the surrogate decision maker believes the patient would have considered if able to act for herself or himself.

(2) Decisions whether to forgo life-sustaining treatment on behalf of a minor or an adult patient who lacks decisional capacity, but without any surrogate decision maker or guardian being available determined after reasonable inquiry by the health care provider, may be made by a court appointed guardian. A court appointed guardian shall be treated as a surrogate for the purposes of this Act.

(b-5) Decisions concerning medical treatment on behalf of a patient without decisional capacity are lawful, without resort to the courts or legal process, if the patient does not have a qualifying condition and if decisions are made in accordance with one of the following paragraphs in this subsection and otherwise meet the requirements of this Act:

(1) Decisions concerning medical treatment on behalf of a minor or adult patient who lacks decisional capacity may be made by a surrogate decision maker or makers in consultation with the attending physician, in the order of priority provided in Section 25 with the exception that decisions to forgo life-sustaining treatment may be made only when a patient has a qualifying condition. A surrogate decision maker shall make decisions for the

patient conforming as closely as possible to what the patient would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the patient's personal, philosophical, religious, and moral beliefs and ethical values relative to the purpose of life, sickness, medical procedures, suffering, and death. In the event an unrevoked advance directive, such as a living will, a declaration for mental health treatment, or a power of attorney for health care, is no longer valid due to a technical deficiency or is not applicable to the patient's condition, that document may be used as evidence of a patient's wishes. The absence of a living will, declaration for mental health treatment, or power of attorney for health care shall not give rise to any presumption as to the patient's preferences regarding any process. If the adult patient's wishes are unknown and remain unknown after reasonable efforts to discern them or if the patient is a minor, the decision shall be made on the basis of the patient's best interests as determined by the surrogate decision maker. In determining the patient's best interests, the surrogate shall weigh the burdens on and benefits to the patient of the treatment against the burdens and benefits of that treatment and shall take into account any other information, including the views of family and friends, that the surrogate decision maker

believes the patient would have considered if able to act for herself or himself.

(2) Decisions concerning medical treatment on behalf of a minor or adult patient who lacks decisional capacity, but without any surrogate decision maker or guardian being available as determined after reasonable inquiry by the health care provider, may be made by a court appointed guardian. A court appointed guardian shall be treated as a surrogate for the purposes of this Act.

(c) For the purposes of this Act, a patient or surrogate decision maker is presumed to have decisional capacity in the absence of actual notice to the contrary without regard to advanced age. With respect to a patient, a diagnosis of mental illness or an intellectual disability, of itself, is not a bar to a determination of decisional capacity. A determination that an adult patient lacks decisional capacity shall be made by the attending physician to a reasonable degree of medical certainty. The determination shall be in writing in the patient's medical record and shall set forth the attending physician's opinion regarding the cause, nature, and duration of the patient's lack of decisional capacity. Before implementation of a decision by a surrogate decision maker to forgo life-sustaining treatment, at least one other qualified health care practitioner ~~physician~~ must concur in the determination that an adult patient lacks decisional capacity. The concurring determination shall be made in writing in the

patient's medical record after personal examination of the patient. The attending physician shall inform the patient that it has been determined that the patient lacks decisional capacity and that a surrogate decision maker will be making life-sustaining treatment decisions on behalf of the patient. Moreover, the patient shall be informed of the identity of the surrogate decision maker and any decisions made by that surrogate. If the person identified as the surrogate decision maker is not a court appointed guardian and the patient objects to the statutory surrogate decision maker or any decision made by that surrogate decision maker, then the provisions of this Act shall not apply.

(d) A surrogate decision maker acting on behalf of the patient shall express decisions to forgo life-sustaining treatment to the attending physician and one adult witness who is at least 18 years of age. This decision and the substance of any known discussion before making the decision shall be documented by the attending physician in the patient's medical record and signed by the witness.

(e) The existence of a qualifying condition shall be documented in writing in the patient's medical record by the attending physician and shall include its cause and nature, if known. The written concurrence of another qualified health care practitioner ~~physician~~ is also required.

(f) Once the provisions of this Act are complied with, the attending physician shall thereafter promptly implement the

decision to forgo life-sustaining treatment on behalf of the patient unless he or she believes that the surrogate decision maker is not acting in accordance with his or her responsibilities under this Act, or is unable to do so for reasons of conscience or other personal views or beliefs.

(g) In the event of a patient's death as determined by a physician, all life-sustaining treatment and other medical care is to be terminated, unless the patient is an organ donor, in which case appropriate organ donation treatment may be applied or continued temporarily.

(h) A surrogate decision maker may execute a POLST portable medical orders form to forgo life-sustaining treatment consistent with this Section.

(Source: P.A. 97-227, eff. 1-1-12.)

(755 ILCS 40/65)

Sec. 65. Department of Public Health Uniform POLST form.

(a) An individual of sound mind and having reached the age of majority or having obtained the status of an emancipated person pursuant to the Emancipation of Minors Act may execute a document (consistent with the Department of Public Health Uniform POLST form described in Section 2310-600 of the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois) directing that resuscitating efforts shall not be implemented. This individual may also revoke the document at will. Such a document may also be

executed by a qualified ~~an attending~~ health care practitioner. If more than one practitioner shares ~~that~~ responsibility for the treatment and care of an individual, any of the qualified attending health care practitioners may act under this Section. Notwithstanding the existence of a do-not-resuscitate (DNR) order or Department of Public Health Uniform POLST form, appropriate organ donation treatment may be applied or continued temporarily in the event of the patient's death, in accordance with subsection (g) of Section 20 of this Act, if the patient is an organ donor.

(a-5) Execution of a Department of Public Health Uniform POLST form is voluntary; no person can be required to execute the either form. Execution of a POLST form shall not be a requirement for admission to any facility or a precondition to the provision of services by any provider of health care services. A person who has executed a Department of Public Health Uniform POLST form should review the form annually and when the person's condition changes.

(b) Consent to a Department of Public Health Uniform POLST form may be obtained from the individual, or from another person at the individual's direction, or from the individual's legal guardian, agent under a power of attorney for health care, or surrogate decision maker, ~~and witnessed by one individual 18 years of age or older, who attests that the individual, other person, guardian, agent, or surrogate (1) has had an opportunity to read the form; and (2) has signed the~~

~~form or acknowledged his or her signature or mark on the form in the witness's presence.~~

(b-5) As used in this Section: 7

~~"attending health care practitioner" means an individual who (1) is an Illinois licensed physician, advanced practice registered nurse, physician assistant, or licensed resident after completion of one year in a program; (2) is selected by or assigned to the patient; and (3) has primary responsibility for treatment and care of the patient.~~

"POLST" means practitioner orders for life-sustaining treatments.

"POLST portable medical orders form" means a medical orders form, including, but not limited to, a Medical Orders for Scope of Treatment (MOST), Medical Orders for Life Sustaining Treatment (MOLST), Physician Orders for Scope of Treatment (POST), or Physician Orders for Life Sustaining Treatment (POLST) form, that is formally authorized by a state or territory within the United States.

(c) Nothing in this Section shall be construed to affect the ability of an individual to include instructions in an advance directive, such as a power of attorney for health care. The uniform form may, but need not, be in the form adopted by the Department of Public Health pursuant to Section 2310-600 of the Department of Public Health Powers and Duties Law (20 ILCS 2310/2310-600). Except as otherwise provided by law, emergency medical service personnel, a health care

provider, or a health care facility shall comply with a Department of Public Health Uniform POLST form, National POLST form, another state's POLST portable medical orders form, or an out-of-hospital Do Not Resuscitate (DNR) order sanctioned by a state in the United States that: (i) has been executed by an adult; and (ii) is apparent and immediately available.

(d) A health care professional or health care provider may presume, in the absence of knowledge to the contrary, that a completed Department of Public Health Uniform POLST form, National POLST form, another state's POLST portable medical orders form, or an out-of-hospital Do Not Resuscitate (DNR) order sanctioned by a state in the United States executed by an adult, or a copy of that form or a previous version of the uniform form, is valid. A health care professional or health care provider, or an employee of a health care professional or health care provider, who in good faith complies with a cardiopulmonary resuscitation (CPR) or life-sustaining treatment order, Department of Public Health Uniform POLST form, or a previous version of the uniform form made in accordance with this Act is not, as a result of that compliance, subject to any criminal or civil liability, except for willful and wanton misconduct, and may not be found to have committed an act of unprofessional conduct.

(d-5) Before voiding or revoking a Department of Public Health Uniform POLST form, National POLST form, or another state's POLST portable medical orders form executed by the

individual, that individual's legally authorized surrogate decision maker shall first: (1) engage in consultation with a qualified health care practitioner; (2) consult the patient's advance directive, if available; and (3) make a good faith effort to act consistently, at all times, with the patient's known wishes, using substituted judgment as the standard. If the patient's wishes are unknown and remain unknown after reasonable efforts to discern them, the decision shall be made on the basis of the patient's best interests as determined by the surrogate decision maker. A qualified health care practitioner shall document the reasons for this action in the patient's medical record. This process does not apply to an individual wanting to revoke his or her own POLST form.

(e) Nothing in this Section or this amendatory Act of the 94th General Assembly or this amendatory Act of the 98th General Assembly shall be construed to affect the ability of a physician or other practitioner to make a do-not-resuscitate order.

(Source: P.A. 99-319, eff. 1-1-16; 100-513, eff. 1-1-18.)